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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,871	12/30/2003	Teresa M. Zander	659-2080	6330

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EXAMINER	
GIBSON, KESHIA L	
ART UNIT	**PAPER NUMBER**
3761	

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/749,871	ZANDER ET AL.	
	Examiner	Art Unit	
	Keshia Gibson	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *15 November 2004* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *2/14 & 5/13/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. Although has supplied the English abstracts as needed for foreign documents, the relevance of the following documents listed on the information disclosure statement filed 2/13/05 is not presently understood, as pertains to the claimed invention: JP 5-5117A, JP 6-11724 A, JP 6-17725 A, and WO 02/057156. Thus, although the documents have been considered, Examiner notes that their relevance is unclear.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "78" has been used to designate both one side seal of the packaging component (Fig. 3) and an outer surface of the wrapper (Fig. 2) and reference character "130" has been used to designate a pattern (Fig. 12) and an unknown element (Fig. 13). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be

notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: "130," "132," and "134" found in Fig. Fig. 13. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 9 recites the limitation "first and second values is within 1% of maximum" in the last line of the claim. There is insufficient antecedent basis for "maximum" in the claim.

6. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant as recited the limitation that the product component has a first and second color that have a first and second value, respectively; the first and second values have a difference within 1% of "maximum." Within the specification the applicant has referred to several different values (hue, luminosity, etc.) used to evaluate color. Furthermore, as claimed, it is possible for the first and second colors to be given almost any arbitrary "values" to be evaluated against any arbitrary "maximum." Because it is unclear as to what type of "values" the applicant has intended to claim and what "maximum" the difference in these values is to be compared against, the claim is considered to be indefinite.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 3-6, 13-16, 18-20, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Costea et al. (WO 02/07665 A1).

In regard to Claim 1, Costea et al. disclose a visually coordinated absorbent product (package for absorbent articles) comprising a product component, comprising a body side liner (topsheet), a garment side outer cover (backsheet) and an absorbent core

disposed between said body side liner and said garment side outer cover (page 11, lines 24-page 12, line 11). Costea et al. disclose that the components of the absorbent article may be various colors, and it is specifically disclosed that the wings of the article may be a color that contracts with that of the rest of the article; thus, the product component is considered to have at least a first and second visual characteristic, wherein the first visual characteristic is different than said second visual characteristic (page 11, line 24-page 13, line 12; page 27, line 28-page 28, line 11). Costea et al. disclose that the package may comprise different colors to indicate the coloring of the absorbent articles disposed within it; thus, the product further comprises a packaging component (package) having at least the first and second visual characteristics, wherein said product component is disposed in said packaging component (page 7, line 8- page 11, line 19, especially page 11, lines 12-19).

In regard to Claim 3, Costea et al. disclose that the core may comprise additional layers (substrates), such as a distribution layer, which lie beneath the topsheet (i.e., are disposed between the body side liner and the core (page 18, line 19-page 20, line 24; page 23-line 4-11). Costea et al. further disclose that the core may be colored, and thus disclose that the substrates of the core may be colored (page 22, lines 18-20).

In regard to Claim 4, as discussed for claim 4, the substrates (optional layers) may be a tissue or surge (distribution) layer (page 18, line 19-page 20, line 24; page 23-line 4-11).

In regard to Claim 5, as discussed previously, first and second visual characteristics are colors.

In regard to Claim 6, Costea et al. disclose that the colors may be a variety of colors, including black, red, green and yellow (page 3, lines 7-11).

In regard to Claim 13, Costea et al. disclose that the packaging component (package) may be sized and configured to hold a single, individual product component (absorbent article) (page 9, line 16-page 10, line 2). (Examiner would like to further note the language "packaging component is sized and configured to hold a single, individual product component" only requires that the package be capable of doing such and that "a single, individual product component" may still exist among a plurality of product components.)

In regard to Claim 14, Costea et al. disclose that the packaging component (package) may be a wrapper element having the first visual characteristic and a fastening element (tab) having the second visual characteristic (page 10, line 19-page 11, line 19).

In regard to Claim 15, the packaging component may be sized and configured to hold a plurality of the product components (page 9, line 16-page 10, line 2). (Also see discussion for Claim 13).

In regard to Claim 16, the packaging component may comprise a non-woven material (page 8, lines 7-22).

In regard to Claims 18-19, see the discussion for Claim 1.

In regard to Claim 20, see the discussion for Claim 5.

In regard to Claim 22, see the discussion for Claim 15.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claims 7-10, 12, 17, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Costea et al.

In regard to Claims 7-10, Costea et al. disclose the claimed invention but do not expressly disclose that the first and second colors of the product or packaging components have hues, values, or saturations of relative degrees. However, the hues, values, and saturations of a color result in different colors, as such, these values are considered result effective variables. Thus, it would have been obvious to one of ordinary skill in the art to vary the hues, values, and saturations of the colors of the various components of Costea et al., since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).*

In regard to Claims 11, 12 and 21, Costea et al. disclose the claimed invention but do not expressly disclose that at least one of the first and second visual characteristics comprises a pattern. However, it would have been obvious to one of ordinary skill in the art to have at least one of the first and second visual characteristics comprise an embossment or a pattern since colors, embossments, and patterns are art recognized equivalents for their use as visual indicators, as supported by Deflander et al. (US 5,531,325: column 5, lines 49-53; column 8, lines 27-38) and the selection of any of these known equivalents to provide visual indication would be within the level of ordinary skill in the art. Deflander et al. and Costea et al. are analogous art because they are from the same field of endeavor: packaging absorbent articles.

In regard to Claim 17, Costea et al. disclose the claimed invention but do not expressly disclose that the non-woven material has a basis weight of between about less than about 1.0 osy. However, the basis weight of a nonwoven material will affect the opacity (and therefore the coloration) of the packaging component. As such, the basis weight of the packaging component is considered to be result effective variable. Thus, it would have been obvious to one of ordinary skill in the art to provide the packaging component of Costea et al. with a specific basis weight, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).*

12. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Balzar et al. (US 6,293,932).

In regard to Claim 2, Costea et al. disclose that the backsheet (garment side outer cover) may be colored (page 17, line 20-page 18, line 14). Costea et al. also disclose that the garment-facing surface comprises adhesive (page 11, lines 9-10) but do not expressly disclose that the product component comprises a peel strip removably connected to the garment side outer cover and having the second visual characteristic. Balzar et al. disclose a colored wrapper for an absorbent article that may also function as a release sheet (peel strip) (column 4, lines 25-45). Balzar et al. teach that using the wrapper as the release sheet reduces manufacturing costs, waste, and the number of steps the user must execute to secure the article to a garment (column 4, lines 25-45). Costea et al. and Balzar et al. are analogous art because they are from the same field of endeavor: packaging of absorbent articles. Thus, it would have been obvious to one of ordinary skill in the art to modify the color wrapper of Costea et al. in such a manner to also serve as a colored release sheet, as taught by Balzar et al. since doing so would reduce manufacturing costs, waste, and the number of steps the user must execute to secure the article to a garment.

Double Patenting

13. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

14. Claims 1-3, 5-10, 12, 16, and 17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 8-18, 23, and 25 of copending Application No. 11/025,645. Although the conflicting claims are not identical, they are not patentably distinct from each other because Claims 8-18, 23, and 25 of the copending application "anticipate" Claims 1-3, 5-10, 12, 16 and 17 of the current application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

In regard to Claim 1, the "an absorbent article" of Claims 8-9 and 18 of the copending application is analogous to the "a product component" of the current application. Both the "an absorbent article" and the "a product component" are to comprise a body side liner, garment side outer cover, and core disposed between the body side liner and the garment side outer cover. The "a packaging component" of Claims 8-9 and 18 of the copending application is analogous to the "a packaging component" of the current application. Both applications require that the absorbent article/product component and the packaging component have both a first and second visual characteristic that are different from each other. Thus, Claims 8-9 and 18 of the copending application "anticipate" Claim 1 of the present invention.

In regard to Claim 2, the limitations for the peel strip garment side outer cover of the

current application are the same as those of peel strip and garment side outer cover of Claim 9 of the copending application and therefore "anticipates" Claim 2 of the current application.

In regard to Claim 3, using the same analogies set forth in the discussion of Claim 1 of the current application, Claim 10 of the copending application set the same limitations and therefore "anticipates" Claim 3 of the current application.

In regard to Claim 5, the "first color characteristic" of Claim 11 of the copending application is analogous to the "first color" of the current application; the "second color characteristic" of the copending application is analogous to the "second color" of the current application. The remaining terminology and limitations for both elements are the same and therefore "anticipate" the current application.

In regard to Claims 6-8, 12 and 16, using the same analogies set forth in the discussion of Claim 5 of the current application, Claims 12-14, 17, and 23 of the copending application set the same limitations and therefore "anticipate" Claim 6-8, 12, and 16 of the current application.

In regard to Claims 9-10, using the same analogies set forth in the discussion of Claim 5 of the current application, Claims 15-16 of the copending application set the similar limitations to Claims 9-10 of the current application. The differences are within the values of the percentage of "maximum." However, the hues, values, and saturations of a color result in different colors, as such, these values are considered result effective variables. Thus, it would have been obvious to one of ordinary skill in the art to vary the hues, values, and saturations of the colors of the various components of the current

application, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).*

In regard to Claim 17, using the same analogies set forth in the discussion of Claim 5 of the current application, Claim 25 of the copending application set the similar limitations to Claims 17 of the current application. The differences are within the range for the basis weight. However, the basis weight of a nonwoven material will affect the opacity (and therefore the coloration) of the packaging component. As such, the basis weight of the packaging component is considered to be result effective variable. Thus, it would have been obvious to one of ordinary skill in the art to provide the packaging component of the current application with a specific basis weight, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).*

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Luceri (US 4,623,340), Jensen (US 5,429,592), Sutton (US 6,264,640 B1), Cottingham (US 2002/0056655 A1), Ceman et al. (US 2003/0088224 A1), Costea et al. (US 2003/0130632 A1), Burgess (US 2003/0136704 A1), Palma et al. (US 2005/0148979 A1), Foy (D 448,479), Wada et al. (EP 951,889 A1), LINDSAY et al. ("Multicolored Absorbent Articles: A Brief History," Kimberly-Clark Corporation, Neenah, Wisconsin).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keshia Gibson whose telephone number is (571) 272-7136. The examiner can normally be reached on M-F 8:30 a.m. - 6 p.m., out every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Keshia Gibson
Examiner, Art Unit 3761
klg 7/15/05

TATYANA ZALUKAEVA
PRIMARY EXAMINER

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